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FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of Section 22 of the Cable
Television Consumer Protection
and Competition Act of 1992)

Equal Employment Opportunities)

MM Docket No. 92-261

REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its domestic telephone operating companies and GTE Laboratories Incorporated, offers its reply to comments filed in response to the Commission's Notice of Proposed Rule Making ("NPRM") in the above referenced proceeding, FCC 92-539, released January 5, 1993. The NPRM seeks comment on the adoption and implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385, 102 Stat. 1460 ("Cable Act of 1992").

In its initial comments GTE urged the Commission to clarify that a video dialtone carrier (VDC) is not a multi-channel video programming distributor (MVPD). GTE was supported in its position by BellAtlantic. Since the EEO provisions of the Cable Act of 1992 only apply to MVPDs, a VDC would not be subject to the Act's EEO requirements.

The United Church of Christ (UCC) and the National Cable Television Association (NCTA), however, argue that VDCs are subject to the Cable Act's EEO provisions. The UCC asserts that "the EEO goals of the Cable Act can be

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achieved only if the Commission interprets the term [MVPD] to include video dialtone service.”¹

Congress did not share the policy concerns raised by UCC. Congress made explicit findings only in the cable industry. If it had been concerned about telephone industry EEO practices, Congress could have made the necessary findings or even deliberately brought VDCs under the Cable Act’s provisions. Similarly, if UCC is concerned that existing LEC EEO regulations are inadequate, it should attempt to strengthen them through a separate proposal for rulemaking directed specifically at such regulations.

Furthermore, the positions taken by UCC and NCTA ignore the statutory definition of a MVPD as “a person . . . who makes available for purchase, by subscribers or customers, multiple channels of video programming.” Cable Act of 1992, Section 2(c)(12). A VDC will perform common carriage services. The FCC tentatively has concluded that the performance of a delivery function for a third party that actually sells the programming does not constitute “distribution” under the statute. Broadcast Signal Carriage Issues, Notice of Proposed Rulemaking, MM Docket No. 92-259 (released November 19, 1992) at ¶42. GTE agrees with the FCC.

As a common carrier, the VDC will carry the programming of other entities who will be responsible for making their programs available to subscribers. Since the VDC is not engaged in the selection of programming, the EEO concerns expressed by UCC and NCTA are simply inapplicable to video dialtone service.

The Commission must also resist the temptation to define VDCs as MVPDs in this proceeding because of the potential impact that decision would have on the implementation of other sections of the Cable Act of 1992. For example, the

¹ UCC Comments at 17.

broadcast signal carriage provisions of Sections 4, 5, and 6 of the Act are applicable to MVPDs.

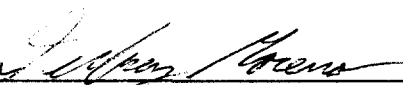
As cited above, in its initial NPRM covering these issues, the Commission tentatively concluded that the statutory definition of MVPD can be interpreted to recognize the differentiation between an entity performing a delivery function with respect to the video signal, and an entity that actually sells programming to the home viewer that is delivered over the facilities of another. This conclusion has significant consequences for retransmission consent that should not be disturbed by artificially and erroneously stretching the definition of MVPD to bring a VDC within the Act's EEO provisions.

CONCLUSION

For the reasons discussed above, GTE urges the Commission to clarify that Section 22 of the Act does not apply to video dialtone carriers providing only common carrier transport service.

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on this 4th day of March, 1993 to all parties on the attached list.



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